IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MS. JUSTICE G.ROHINI

WP MP No. 27549 of 2007
AND
WRIT PETITION NO. 5394 OF 2006

Dated : December 27, 2007

Between:

P.R. Cements Limited,
29-13-28, Kaleswar Rao Road,
Suryaraopet, Vijayawada,
Rep. By its Managing Director
Dr.K.S.N. Prasad.

Petitioner

AND

The Appellate Authority for Industrial
And Financial Reconstruction,
25, Kasturba Gandhi Marg,
New Delhi –1,
Rep.by its Registrar and others

Respondents

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MS. JUSTICE G.ROHINI

WP MP No. 27549 of 2007
AND

WRIT PETITION NO. 5394 OF 2006

ORAL ORDER: **(per THE HON'BLE MRS. JUSTICE T.MEENA KUMARI)**

Seeking a writ of certiorari calling for the records of the second respondent connected with the proceedings under Reference Case No.57 of 2000 dated 12.1.2004 as confirmed by the 1st respondent under Appeal No. 40 of 2004 dated 27.9.2005 and to declare the same as unenforceable, arbitrary and ultravires the Sick Industrial Companies (Special Provisions Act), 1985 and consequently to quash the same, the petitioner filed this writ petition.

The petitioner company was set up as a Public Limited Company in the year 1985 and the project was commissioned with the financial assistance from respondents 4 to 7 and it went into commercial production in September, 1991. The Company took up expansion of its business with the financial assistance of IFCI during 1996-97, but with the passage of time, the company suffered financial crisis resulting in lower capacity utilisation and which ultimately led to cash losses leading to erosion of complete net worth by the end of the year 1999. As such, the petitioner company made a reference to the second respondent herein under Sec. 15 of the Sick Industrial Companies Act, 1985, which was registered as 57 of 2000. The Board for Industrial

Financial and Reconstruction, in its meeting dated 22.6.2000 declared the petitioner company as a Sick Industrial Company and appointed the sixth respondent as the Operating Agency. The proposals submitted by the petitioner company for rehabilitation were rejected. Subsequently, certain promoters submitted a comprehensive rehabilitation proposal with EMD payment of Rs.25.00 lakhs, which was also not accepted. Ultimately, in reply to the letter written by the petitioner dated 16.8.2003, the second respondent issued a show cause notice dated 29.10.2003 asking why the petitioner company should not be wound up. It is averred by the petitioner that in the meeting held on 12.1.2004, M/s. Annapurna Enterprises, who requested for their presence in the meeting to present their views on rehabilitation, were not allowed and the second respondent passed orders under Sec. 20(1) of the Sick Industrial Companies Act, 1985.

Aggrieved thereby, the petitioner company filed appeal being 40 of 2004, before the first respondent, which also was dismissed by order dated 27.9.2005 confirming the order dated 12.1.2004 passed by the second respondent, which is assailed in this writ petition.

On 19.10.2006, when this writ petition has come up for hearing, since none appeared for the petitioner, the writ petition was dismissed in dafault.

Now WP MP No. 27549 of 2007 is filed seeking to set aside the default order dated 19.10.2006 and to restore the writ petition.

When the above miscellaneous application was taken up for hearing on 11.12.2007, except respondent No.1, there was no representation on behalf of the other respondents. Therefore, the matter was directed to be posted on 13.12.2007, on which date also there was no representation and it stood adjourned to 19.12.2007. From 19.12.2007, it was adjourned to 24.12.2007. On 24.12.2007 also, none of the respondents appeared nor there was any representation on their behalf. Learned counsel for the petitioner submits that notice has been issued to all the respondents and they have received the same, as is evident from the original of the said notice filed in WP(USR) No. 12601 of 2007. Consequently, the above Miscellaneous Application is ordered and the Writ Petition is restored.

Heard learned counsel for the petitioner. Since there is no representation on behalf of the respondents, the matter is being heard and decided on the material available on record.

The learned counsel for the petitioner contends that the order dated 27.9.2005 made in Appeal No. 40 of 2004 by the first respondent confirming the order dated 12.1.2004 passed by the second respondent, is not a

speaking order. It is further contended that since the first respondent has not adverted to merits of the case and passed the impugned order without affording an opportunity to the petitioner, the same may be remanded back for consideration afresh after affording an opportunity to the petitioner to put forth their case.

Evidently, the order dated 27.9.2005 passed in Appeal No. 40 of 2004 by the first respondent, is not on merits inasmuch as none appeared on behalf of the petitioner herein before the first respondent. Therefore, without adverting to various contentious issues raised in this writ petition, we set aside the order dated 27.9.2005 passed by the first respondent in Appeal No. 40 of 2004 and remand the same to the first respondent for disposal afresh, on merits, after affording an opportunity to the petitioner herein, within a period of three months from the date of receipt of a copy of this order.

With the above direction, the writ petition stands disposed of. No order as to costs.

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T.MEENA KUMARI, J.

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G.ROHINI, J.

December 27, 2007
MAS